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City of Folsom, City of Roseville, and San Juan
Water District

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

THE CALIFORNIA NATURAL RESOURCES AGENCY, et al.,

Plaintiffs,

V.

WILBUR ROSS, et al.,

Defendants.

Case No. 1:20-cv-00426-DAD-EPG

**STIPULATION AND ORDER
REGARDING INTERVENTION BY CITY
OF FOLSOM, CITY OF ROSEVILLE, AND
SAN JUAN WATER DISTRICT**

STIPULATION

This stipulation is entered into by Plaintiffs California Natural Resources Agency, California Environmental Protection Agency, and People of the State of California by and through California Attorney General Xavier Becerra ("Plaintiffs"); Defendants Wilbur Ross, in his official capacity as Secretary of Commerce; Chris Oliver, in his official capacity as Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration; National Marine Fisheries Service; David Bernhardt, in his official capacity as Secretary of Interior; Aurelia Skipwith, in her official capacity as Director of the U.S. Fish and Wildlife Service; U.S. Fish and Wildlife Service; Brenda Burman, in her official capacity as commissioner of U.S. Bureau of Reclamation; U.S. Bureau of Reclamation ("Federal Defendants"); Defendant-Intervenors Sacramento River Settlement Contractors ("SRS Contractors") and Tehama-Colusa Canal Authority ("TCCA") (collectively, the "Sacramento River Intervenors"); Defendant-Intervenors San Luis & Delta-Mendota Water Authority ("SLDMWA") and Westlands Water District ("Westlands"); Defendant-Intervenor the State Water Contractors ("SWC"); Defendant-Intervenors Oakdale Irrigation District ("OID") and South San Joaquin Irrigation District ("SSJID"); Defendant-Intervenors Friant Water Authority ("Friant") and Arvin-Edison Water Storage District ("Arvin-Edison"); Defendant-Intervenor Contra Costa Water District ("Contra Costa"); and proposed Defendant-Intervenors the City of Folsom ("Folsom"), the City of Roseville ("Roseville") and San Juan Water District ("San Juan") (collectively, the "Folsom Diverters").

RECITALS

22 WHEREAS, Plaintiffs filed their Complaint against the Federal Defendants in the U.S.
23 District Court for the Northern District of California. ECF Doc. No. 1.

WHEREAS, the case was transferred to the U.S. District Court for the Eastern District of California by Order dated March 20, 2020. ECF Doc. No. 29.

WHEREAS, the Court granted the Sacramento River Intervenors intervention pursuant to the terms of a stipulation. ECF Doc. No. 46.

28 WHEREAS, Plaintiffs filed a First Amended Complaint. ECF Doc. No. 51.

1 WHEREAS, SLDMWA and Westlands moved to intervene, Plaintiffs filed a notice of
2 non-opposition, and the Court entered an Order granting intervention to SLDMWA and
3 Westlands. ECF Doc. Nos. 13, 37, 65.

4 WHEREAS, the SWC moved to intervene, Plaintiffs filed a notice of non-opposition, and
5 the Court entered an Order granting intervention to the SWC. ECF Doc. Nos. 24, 38, 65.

6 WHEREAS, the Court granted OID and SSJID intervention pursuant to the terms of a
7 stipulation. ECF Doc. No. 66.

8 WHEREAS, the Court granted Friant and Arvin-Edison intervention pursuant to the terms of a
9 terms of a stipulation. ECF Doc. No. 72.

10 WHEREAS, the Court granted Contra Costa intervention pursuant to the terms of a
11 stipulation. ECF Doc. No. 104.

12 WHEREAS, Folsom, Roseville, and San Juan all contend that they hold contracts that
13 entitle them to receive water supply from the American River Division of the Central Valley
14 Project, and Folsom and San Juan further contend that they also hold settlement contracts based
15 on their historic American River water rights. Folsom and San Juan assert that they have historic
16 water rights with priority dates as early as 1851, which predate Reclamation's construction of
17 Folsom Reservoir by more than 100 years, and that they continue to exercise and protect those
18 rights.

19 WHEREAS, the Folsom Diverters all contend they obtain these water supplies through
20 diversion facilities at Folsom Reservoir (the "Folsom Dam M&I Intake") and therefore have an
21 interest in maintaining Folsom Reservoir at levels that are adequate for those facilities to operate.

22 WHEREAS, the Folsom Diverters contend that operations of the state and federal water
23 projects during the 2012-15 drought under the then-existing regulatory conditions reduced
24 Folsom Reservoir to its lowest-ever recorded storage level, and the low storage levels raised
25 safety concerns about the continued use of the diversion facilities at Folsom Reservoir and
26 threatened the ability of Folsom and San Juan to exercise their senior water rights.

27 WHEREAS, in late March, counsel for the Folsom Diverters began conferring with
28 counsel for the Parties to this case and asked whether they would be willing to stipulate to

1 permissive intervention of Folsom, Roseville, and San Juan, and counsel for the Parties agreed
2 in concept in April, and as each Defendant-Intervenor was added, counsel for that Defendant-
3 Intervenor has agreed to stipulate to the intervention of the Folsom Diverters.

4 WHEREAS, to avoid the need for the Folsom Diverters to file a motion to intervene, the
5 Parties agree that Folsom, Roseville, and San Juan should be granted leave for permissive
6 intervention in this case.

7 NOW, THEREFORE, it is hereby stipulated by and between the Parties and the Proposed
8 Intervenors, through their respective counsel, as follows:

9 1. Folsom, Roseville, and San Juan will be granted permissive intervention in this
10 action.

11 2. Folsom, Roseville, and San Juan will promptly file answers in intervention to
12 Plaintiffs' First Amended Complaint.

13 3. Folsom, Roseville, and San Juan agree to make a good-faith effort to avoid
14 duplicating any arguments raised by the Federal Defendants or any other party, although the
15 Parties all recognize and agree that Folsom, Roseville, and San Juan may address the same
16 subject matter, issues or topics raised by the Federal Defendants from a different perspective.

17 4. The Folsom Diverters agree to be bound by the briefing page limitations set forth
18 in the Court's Standing Order for Civil Cases (ECF Doc. No. 115, Att. 1, p. 2, ll. 6-8 [25 pages
19 for moving an opposition briefs, 15 pages for reply briefs]), or any shorter page limitation that
20 the Court may impose on intervenors as this case proceeds.

21

22 DATED: May __, 2020

XAVIER BECERRA
Attorney General of California
TRACY L. WINSOR
Supervising Deputy Attorney General
By: _____/s/ Daniel Fuchs _____
DANIEL FUCHS
Attorneys for Plaintiffs California Natural
Resources Agency and People of the State of
California by and through Attorney General
Xavier Becerra

23

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28

1 DATED: May __, 2020

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL & NATURAL RESOURCES
DIVISION, WILDLIFE & MARINE
RESOURCES SECTION
By: _____/s/ Lesley Lawrence-Hammer _____
LESLEY LAWRENCE-HAMMER
Attorneys for Federal Defendants

5 DATED: May __, 2020

DOWNEY BRAND LLP
By: _____/s/ Meredith E. Nikkel _____
MEREDITH E. NIKKEL
Attorneys for Defendant-Intervenors
RECLAMATION DISTRICT NO. 108, SUTTER
MUTUAL WATER COMPANY; NATOMAS
CENTRAL MUTUAL WATER COMPANY;
RIVER GARDEN FARMS WATER COMPANY;
PLEASANT GROVE-VERONA MUTUAL
WATER COMPANY; PELGER MUTUAL
WATER COMPANY; MERIDIAN FARMS
WATER COMPANY; HENRY D. RICHTER, et
al.; HOWALD FARMS, INC.; OJI BROTHERS
FARM, INC.; OJI FAMILY PARTNERSHIP;
CARTER MUTUAL WATER COMPANY;
WINDSWEPT LAND AND LIVESTOCK
COMPANY; MAXWELL IRRIGATION
DISTRICT; BEVERLY F. ANDREOTTI, et al.;
TISDALE IRRIGATION AND DRAINAGE
COMPANY; PROVIDENT IRRIGATION
DISTRICT; PRINCETON-CODORA-GLENN
IRRIGATION DISTRICT and TEHAMA
COLUSA CANAL AUTHORITY

18 DATED: May __, 2020

SOMACH SIMMONS & DUNN
By: _____/s/ Andrew J. Hitchings _____
ANDREW J. HITCHINGS
Attorneys for Defendants-Intervenors GLENN
COLUSA IRRIGATION DISTRICT;
RECLAMATION DISTRICT NO. 104;
CONAWAY PRESERVATION GROUP, LLC;
DAVID AND ALICE te VELDE FAMILY
TRUST; PELGER ROAD 1700, LLC;
ANDERSONCOTTONWOOD IRRIGATION
DISTRICT; CITY OF REDDING; and KNIGHTS
LANDING INVESTORS, LLC

25 DATED: May __, 2020

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
By: _____/s/ Daniel J. O'Hanlon _____
DANIEL J. O'HANLON
Attorneys for Defendant-Intervenors
SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY and WESTLANDS WATER
DISTRICT

1 DATED: May __, 2020

VAN NESS FELDMAN LLP
By: _____/s/ Jenna R. Mandell-Rice _____
JENNA R. MANDELL-RICE
ATTORNEYS FOR DEFENDANT-
INTERVENOR THE STATE WATER
CONTRACTORS

5 DATED: May __, 2020

O'LAUGHLIN & PARIS, LLP
By: _____/s/ Timothy J. Wasiewski _____
TIMOTHY J. WASIEWSKI
Attorneys for Defendant-Intervenor
OAKDALE IRRIGATION DISTRICT

9 DATED: May __, 2020

ROBBINS, BROWNING, GODWIN &
MARCHINI
By: _____/s/ Kenneth M. Robbins _____
KENNETH M. ROBBINS
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SOUTH SAN JOAQUIN IRRIGATION
DISTRICT

14 DATED: May __, 2020

KAPLAN, KIRSCH & ROCKWELL, LLP
By: _____/s/ Matthew G. Adams _____
MATTHEW G. ADAMS
Attorneys for Defendant-Intervenors
FRIANT WATER AUTHORITY and ARVIN-
EDISON WATER STORAGE DISTRICT

18 DATED: May __, 2020

PERKINS COIE LLP
By: _____/s/ Marc R. Bruner _____
MARC R. BRUNER
Attorneys for Defendant-Intervenor
CONTRA COSTA WATER DISTRICT

21 DATED: May __, 2020

BARTKIEWICZ, KRONICK & SHANAHAN,
PC
By: _____/s/ Jennifer T. Buckman _____
JENNIFER T. BUCKMAN
Attorneys for Proposed Defendant-Intervenors
CITY OF FOLSOM, CITY OF ROSEVILLE, and
SAN JUAN WATER DISTRICT

ORDER

Pursuant to the Parties' Stipulation, the Court hereby grants the City of Folsom, the City of Roseville, and San Juan Water District permissive intervention on the terms set forth in the Stipulation.

IT IS SO ORDERED.

7 Dated: June 3, 2020

Dale A. Lloyd
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE